Chai Kok Choi v Ketua Polis Negara & Ors

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–329 OF 2005 (W)
AHMAD FAIRUZ CHIEF JUSTICE, HASHIM YUSOFF AND AZMEL FCJJ
26 OCTOBER 2007

Administrative Law — Natural justice — Rules of natural justice — Whether appellant denied access to materials contained in the investigation papers — Whether exists conflicting Court of Appeal authorities

Administrative Law — Rules of natural justice — Procedural fairness — Whether a disciplinary authority was required to give the appellant an oral hearing so as to meet requirements of procedural fairness

The appellant was an Inspector in the Royal Malaysian Police Force before he was dismissed from the service by a letter dated 22 June 1995. Dissatisfied with that decision, the appellant filed an action in the Kuala Lumpur High Court seeking for declaration that his dismissal from the police force was null and void and that he be restored to his original rank of Inspector. The appellant's action was allowed by the High Court. However, the Court of Appeal reversed the decision of the High Court. The appellant appealed to the Federal Court.

Held, dismissing the appeal:

(1) The Court of Appeal was correct in holding that the manner in which the charges were framed had not caused confusion in the mind of the appellant. The Court of Appeal was correct in referring to the principle established in the case of *Inspector General of Police & Anor v Alan Noor bin Kamat* [1988] 1 MLJ 280 (see para 4).

(2) The Court of Appeal was also correct in holding that there is no added duty on the disciplinary authority to provide documents without any request being made by the offending officer. Here the documents were provided to the disciplinary authority but not to the appellant. The decision in *Raja Abdul Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 cannot be followed (see para 5).

(3) On these facts there is no conflict between the decisions *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 2 MLJ 131 and *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308. It is of particular importance to remember the well established principle that the rule of precedent shall apply whenever the relevant facts of an earlier case are similar to the relevant facts of a subsequent case. The decision of the earlier case shall be binding on the subsequent case. However, such rule would only apply if the relevant facts of both cases are similar. If the relevant facts are not similar then the earlier decision would be distinguished and as such would not be binding on the subsequent case. Therefore, the decision in *Ang Seng Wan* is distinguished from the decision in *Raja Abdul Malek* and the Court of Appeal had correctly followed the decision in *Raja Abdul Malek* as the relevant facts in the instant case are similar to those of that in the decision of *Raja Abdul Malek* (see para 8).

(4) As the appellant had admitted to the first two charges, an oral hearing on the present facts and circumstances would not be necessary. The written explanation given by the appellant would serve to mitigate his sentencing. In view of the seriousness of the offence committed by a police officer, the punishment of dismissal was quite appropriate under the circumstances (see para 10).

[Bahasa Malaysia summary

Perayu adalah seorang Inspektor dalam pasukan Polis DiRaja Malaysia sebelum beliau dipecat daripada perkhidmatan melalui surat bertarikh 22 Jun 1995. Tidak berpuas hati dengan keputusan, perayu telah memfailkan satu tindakan dalam Mahkamah Tinggi Kuala Lumpur memohon satu perisytiharan bahawa pemecatan beliau daripada pasukan polis adalah batal dan tidak sah dan bahawa beliau dikembalikan semula kepada pangkat asal sebagai Inspektor. Tindakan perayu telah dibenarkan oleh Mahkamah Tinggi. Walaubagaimanapun, Mahkamah Rayuan telah mengakaskan keputusan Mahkamah Tinggi. Perayu merayu kepada Mahkamah Persekutuan.

Diputuskan, menolak rayuan:

(1) Mahkamah Rayuan adalah betul dalam berpegang kepada keadaan dimana pertuduhan dirangka tidak menyebabkan kekeliruan dalam pemikiran perayu. Mahkamah Rayuan adalah betul dalam merujuk kepada prinsip yang telah dibuktikan dalam kes *Inspector General of Police & Anor v Alan Noor bin Kamat* [1988] 1 MLJ 280 (lihat perenggan 4).

(2) Mahkamah Rayuan juga betul dalam berpegang kepada tiada tugasan tambahan kepada pihak berkuasa disiplin untuk menyediakan dokumen-dokumen tanpa sebarang permintaan dibuat oleh pegawai yang bersalah. Di sini dokumen-dokumen telah disediakan kepada pihak berkuasa disiplin tetapi tidak kepada perayu. Keputusan dalam *Raja Abdul Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 ML J 308 tidak boleh diikuti (lihat perenggan 5).

(3) Bahawa berdasarkan fakta-fakta ini tiada konflik antara keputusan *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 2 MLJ 131 dan *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308. Ia adalah atas butiran yang penting untuk diingati bahawa prinsip yang telah dibuktikan sebaiknya bahawa kaedah duluan akan terpakai bilamana fakta-fakta relevan untuk kes terdahulu adalah sama kepada fakta-fakta relevan untuk kes yang ada sekarang. Keputusan kes terdahulu akan mengikat kepada kes sekarang. Walau bagaimanapun, kaedah tersebut hanya akan terpakai jika fakta-fakta relevan untuk kes-kes tesebut adalah sama. Jika fakta-fakta relevan adalah tidak sama barulah keputusan terdahulu akan dibezakan dan oleh itu tidak akan mengikat kes sekarang. Oleh itu, keputusan *Ang Seng Wan* dibezakan dengan keputusan Raja Abdul Malek dan Mahkamah Rayuan adalah betul menurut kepada keputusan Raja Abdul Malek kerana fakta-fakta relevan dalam kes terkini adalah sama dengan yang ada dalam keputusan Raja Abdul Malek (lihat perenggan 8).

(4) Memandangkan perayu telah mengaku kepada dua pertuduhan, satu pendengaran lisan ke atas fakta-fakta terkini dan keadaan-keadaan tidak lagi diperlukan. Penjelasan bertulis yang diberikan oleh perayu akan dipertimbangkan sebagai meringankan hukumannnya. Berdasarkan kepada beratnya kesalahan yang dilakukan oleh pegawai polis, hukuman pemecatan adalah tepat di bawah keadaan-keadaan (lihat perenggan 10).]

Notes

For a cases on rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) para 229.

For cases on procedural fairness, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 859–863.

Cases referred to

Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor [2002] 2 IVILJ 131 (refd)

Inspector General of Polis & Anor v Alan Noor bin Kamat [1988] 1 MLJ 280 (refd)

Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308 (refd)

Appeals from: Civil Appeal No W-01–78 of 2002 (Court of Appeal) and Civil Appeal No S2-21–112 of 1995 (High Court, Kuala Lumpur)

Christopher Fernando (Faiz Fadzil with him) (Aris Rizal Christopher Fernando & Co) for the appellants.
Amarjeet Singh (Jabatan Peguam Negara) for the respondents.

Ahmad Fairuz Chief Justice (delivering judgment of the court):

[1] The appellant in this case has been granted leave to appeal to the Federal Court on the following questions of law for consideration of the court:

(i) Is it in accordance with the rules of natural justice that the applicant be denied all the materials contained in the investigation papers whilst the same were supplied to the Inspector General of Police who is the disciplinary authority and whether when there are two conflicting decisions given by the Court of Appeal, should not the later decision prevail over the earlier decision that is to say should not *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 2 MLJ 131 be preferred and accepted in deciding this case rather than *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 a case decided some seven years earlier?

(ii) Is it within the purview of the court to hold in any particular case that the facts and surrounding circumstances require the disciplinary authority to afford the applicant an oral hearing so as to meet the requirements of procedural fairness when it is obvious that crucial matters in favour of the applicant were not taken into account or considered by the said disciplinary authority in the disciplinary process?

[2] The appellant was an Inspector in the Royal Malaysian Police Force before he was dismissed from the service by a letter dated 22 June 1995. Dissatisfied with that decision, the appellant filed an action in the Kuala Lumpur High Court seeking for declaration that his dismissal from the police force was null and void and that he be restored to his original rank of Inspector. The action was allowed by the High Court. However, the Court of Appeal reversed the decision of the High Court. Hence, this appeal to the Federal Court.

A FINDINGS OF THE HIGH COURT

[3] The learned trial judge found that the respondents had clearly breached all semblance of natural justice. In his grounds of judgment the learned trial judge said:

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> The Disciplinary Authority had no power to prejudge on the charges and decide for itself that the charges merited only the punishment of dismissal. Having taken such one-sided view the Disciplinary Authority could not be said to be unbiased. Having made its decision that the plaintiff was entitled only to an acquittal or to
C the draconian punishment of dismissal without considering the alternative punishment of reduction in rank, the disciplinary authority has clearly not complied with general O 38whereby it could have had the choice of any one of seven punishments for consideration.

D FINDINGS OF THE COURT OF APPEAL

[4] Two main points were considered and dealt with by the Court of Appeal. Firstly, it was the appellant's contention that the manner the three charges were framed had caused confusion in the mind of the appellant.
E On this contention, the Court of Appeal, referring to the principle established in the case of *Inspector General of Police & Anor v Alan Noor bin Kamat* [1988] 1 MLJ 280 said as follows:

> ... a scrutiny of the show cause letter reveals that it is in accordance with the law
F as laid down in *Inspector-General of Police & Anor v Alan Noor Bin Kamat* [1988] 1 MLJ 260. Objectively speaking, there is nothing in that letter which would induce confusion in the mind of a reasonable man similarly circumstanced as the respondent that the respondent was indeed not in a state of confusion comes across from his representation dated 23 May 1995 made to the Inspector-General of Police.

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We fully agree with the ruling made by the Court of Appeal.

[5] The second point was in respect of an apparent conflict in the earlier decisions of the Court of Appeal namely*Ang Seng Wan v Suruhanjaya Polls Di*
H *Raja Malaysia & Anor* [2002] 2 MLJ 131 and *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308. In the *Ang Seng Wan* case it was held that oral inquiry or hearing ought to have been conducted. In that case certain documents were made available to the disciplinary authority but were not made available to
I Ang Seng Wan. That failure tantamounts to a miscarriage of justice. In the present case the whole investigation papers were given to the Disciplinary Authority. But they were not made available to the appellant. As such the appellant contended there was a miscarriage of justice. To that argument the Court of Appeal said:

> On the facts of the case now before us, there was no evidence that the disciplinary authority had acted unfairly towards the respondent. The only material before the High Court was that the investigation papers pertaining to this case had been sent to the Inspector-General of Police, it is the appellant's case that any document required by the respondent would have been given to him if a request was made to that behalf, Learned counsel for the respondent argued that a request was unnecessary as a matter of law. It is his contention that as a matter of law there is a duty on the appellants to make available to the respondent the documents without a request being made. With respect we cannot accede to this argument. In *Raja Abdul Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polls & Ors* [1995] 1 MLJ 308, this Court held that there is no added duty on the disciplinary authority to provide documents without any request being made by the offending officer.

In our view, the finding of the Court of Appeal is correct.

THE TWO QUESTIONS OF LAW

[6] As earlier stated, two questions of law were posed for our consideration in this Appeal. In respect of the first question of law, it is of particular importance to remember the well established principle that the rule of precedent shall apply whenever the relevant facts of an earlier case are similar to the relevant facts of a subsequent case and if such situation happens the decision of the earlier case shall be binding on the subsequent case. However, such rule would only apply if the relevant facts of both cases are similar. If the relevant facts are not similar then the earlier decision would be distinguished and as such would not be binding on the subsequent case.

[7] That is exactly the position between the *Ang Seng Wan* case and the *Raja Abdul Malek*'s case. As can be seen from the judgment of the Court of Appeal, the relevant facts of the two cases are not similar. In the *Ang Seng Wan* case, the document and the service record had been used to determine proper sentence imposed against the police officer. At the High Court hearing, *Ang Seng Wan*'s counsel asked for a copy of the document but was refused. In the *Raja Abdul Malek*'s case, no document was requested by Raja Abdul Malek at the High Court hearing. Hence, the court held that no document was required to be given to him. It was for that reason the Court of Appeal in this case followed the decision in *Raja Abdul Malek* case because no request for any document was made by the appellant.

[8] We totally agree with the decision of the Court of Appeal. The only material before the High Court was that the investigation papers pertaining to this case had been sent to the Inspector-General of Police and nothing else. There was nothing before the court that whatever contained in the investigation papers had been used adversely against the appellant except

perhaps to frame the three charges against him. Hence, our answer to the first question is that the *Ang Seng Wan*'s case is distinguished from the *Raja Abdul Malek* case and the Court of Appeal had correctly followed the decision in the *Raja Abdul Malek* case as the relevant facts in the instant case are similar to those of *Raja Abdul Malek* case.

[9] As regards the second question, we took into consideration that the appellant had admitted committing the first two charges. This is clearly shown in the letter dated 23 May 1995 in reply to the show cause letter. That being the position, what useful purpose would it serve to have an oral hearing. An oral hearing might have been necessary if the appellant had not admitted committing the offences. It tantamounts to him having pleaded guilty to those charges. As such, a hearing would no longer be necessary. The explanation which he gave would only serve to mitigate the sentence. But such explanation would not require having an oral hearing. Having it written as done by the appellant would be sufficient and would not cause any injustice to the appellant. Our answer to the second question is that on the facts and circumstances of this case, an oral hearing would not be necessary.

[10] We are of the view that based on the first two charges alone which the appellant admitted to have committed, in view of the seriousness of such offences committed by a police officer, the punishment of dismissal was quite appropriate under the circumstances. We find that the explanation given would not be sufficient to have the punishment reduced to anything less than dismissal.

[11] In the light of the circumstances as mentioned above, we are unanimous in deciding that the appeal be dismissed with costs. Deposit to the respondent to account for taxed costs.

Appeal dismissed.

Reported by Dipendra Harshad Rai